

No. 76-276

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In the Supreme Court of the United States

OCTOBER TERM, 1976

CARL HILLSTROM, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1) is reported at 533 F. 2d 209.

JURISDICTION

The judgment of the court of appeals was entered on June 9, 1976. A petition for rehearing was denied on July 15, 1976. Mr. Justice Powell extended the time for filing a petition for a writ of certiorari to August 24, 1976, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the documentation and safety inspection of petitioners' vessel by the Coast Guard was authorized by statute and lawful under the Fourth Amendment.

STATUTES INVOLVED

14 U.S.C. 2 provides in pertinent part:

The Coast Guard shall enforce or assist in the enforcement of all applicable Federal laws on and under the high seas and waters subject to the jurisdiction of the United States; shall administer laws and promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States covering all matters not specifically delegated by law to some other executive department * * * .

14 U.S.C. 89 provides:

(a) The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance. When from such inquiries, examination, inspection, or search it appears that a breach of the laws of the United States rendering a person liable to arrest is being, or has been committed, by any person, such person shall be arrested * * * ; or, if it shall appear that a breach of the laws of the United States has been committed so as to render such vessel, or the merchandise * * * on board of * * * such vessel, liable to forfeiture

* * * such vessel or such merchandise, or both, shall be seized.

(b) The officers of the Coast Guard insofar as they are engaged, pursuant to the authority contained in this section, in enforcing any law of the United States shall:

(1) be deemed to be acting as agents of the particular executive department or independent establishment charged with the administration of the particular law; and

(2) be subject to all the rules and regulations promulgated by such department or independent establishment with respect to the enforcement of that law.

(c) The provisions of this section are in addition to any powers conferred by law upon such officers, and not in limitation of any powers conferred by law upon such officers, or any other officers of the United States.

STATEMENT

After a jury trial in the United States District Court for the Southern District of Florida, petitioners were convicted of conspiracy to import marijuana, in violation of 21 U.S.C. 963 and 952(a). Petitioners Hillstrom and Keppel were sentenced to imprisonment for four years; petitioners Darrow and Savko were sentenced to imprisonment for two years. In addition, each was sentenced to a special parole term of two years. The court of appeals affirmed (Pet. App. 1).

Petitioners were arrested by Coast Guard officers when their vessel was found to contain over 5,000 pounds of marijuana. At a pretrial hearing on their motion to suppress, the following evidence was adduced:

On March 29, 1975, petitioners and co-defendants Leonard and Loren Stockton¹ were aboard the Royono, a pleasure craft, as it travelled in the Windward Passage between Haiti and Cuba (Tr. 7). Several Coast Guard vessels, on routine patrol to enforce United States safety and documentation laws, were also in the area (Tr. 125-126, 132, 146). At approximately 10:00 p.m. the patrol came upon the Royono (Tr. 149). The Coast Guard cutter Cape Knox approached and was advised by a crewman that the Royono was a United States flag vessel bound for Fort Lauderdale (Tr. 23, 150, 191, 232). Darkness and rough seas made immediate boarding unwise. The patrol accordingly kept the Royono in sight until day-break before boarding her to conduct a safety and documentation check (Tr. 152-153, 192).

Prior to boarding, the patrol radioed its headquarters in Tampa, Florida, to see if there was any information on file regarding the Royono. The Tampa office in turn contacted the Customs Service, which determined, with the aid of a computer, that a vessel named "Royono" (but of a different size and type from petitioners' vessel) had recently been involved in unlawful smuggling activities (Tr. 109, 118-121, 127-128, 150-152). This information was radioed back to the Coast Guard patrol (Tr. 150-152).

At approximately 8:30 a.m. on the following morning two Coast Guard crewman and a Customs officer boarded the Royono, announcing their purpose to make a documentation and safety inspection (Tr. 176, 195). The members of the Royono's crew—the six defendants herein—were called to the deck for an examination of their identification papers (a standard practice in such inspections (Tr. 138)). Boatswain Harold Eads went below

¹The Stocktons were tried jointly with petitioners and convicted of conspiracy. They have not joined in this petition.

deck, accompanied by petitioner Hillstrom (the master of the Royono), to examine the documentation number on the main beam, and there discovered the marijuana in plain view (Tr. 233-234, 238; Pet. App. 1, p. 3910).

The crew members were then arrested and the vessel was towed to a marina in the United States. A subsequent search revealed a total of 77 sacks of marijuana weighing altogether 5,240 pounds (Tr. 554).

ARGUMENT

Petitioners argue that the Coast Guard officers in this case acted as agents of the Customs Service but beyond the statutory authority conferred upon Customs Service officers, and that they violated the Fourth Amendment principles recently set down in this Court's "border search" cases. We submit that neither the Customs Service statutes nor the border search cases apply, and that under the relevant authorities—the Coast Guard statutes and this Court's "administrative inspection" cases—the actions of the Coast Guard officers in this case were lawful.

1. Petitioners contend that the Coast Guard officers' actions in this case fell within the ambit of 14 U.S.C. 89(b), which provides that such officers "in enforcing any law of the United States shall * * * be deemed to be acting as agents of the particular executive department * * * charged with the administration of the particular law; and * * * be subject to all the rules and regulations promulgated by such department * * * with respect to the enforcement of that law." Petitioners argue that when Coast Guard officers boarded their vessel they were acting as agents of the Customs Service, and that under 14 U.S.C. 89(b) they were therefore subject to—but violated—Section 581(a) of the Tariff Act of 1930, as amended, 49 Stat. 521, 19 U.S.C. 1581(a), which limits the authority of Customs officers to board vessels "in the United States or within the customs waters."

This argument, however, wholly ignores 14 U.S.C. 89(c), which states plainly that "[t]he provisions of this section are in addition to * * * and not in limitation of any powers conferred by law upon such [Coast Guard] officers, or any other officers of the United States."² That provision prevents 14 U.S.C. 89(b) and 19 U.S.C. 1581(a) from being read together as restricting the boarding authority of Coast Guard officers to vessels in the customs waters.

Under 14 U.S.C. 143, commissioned, warrant, and petty officers of the Coast Guard are also officers of the Customs Service. That statute contains no analogue to 14 U.S.C. 89(c) disclaiming any intent to restrict the powers of Coast Guard officers. Even if it could be argued, however, that Congress, in conferring upon the Coast Guard the powers of the Customs Service, meant also to impose the restrictions of 19 U.S.C. 1581(a), that argument could have force only when a Coast Guard officer acted predominantly in his capacity as a Customs officer. The Customs Service is charged principally with enforcement of the laws governing the entry of persons and goods into this country. The Coast Guard, by contrast, is instructed by Congress, *inter alia*, to "enforce or assist in the enforcement of all applicable Federal laws on or under the high seas and waters subject to the jurisdiction of the United States" and to "administer laws and promulgate and enforce regulations for the promotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States * * *." 14 U.S.C. 2. Congress could not have meant to impose restraints applicable to the Customs

²Moreover, 19 U.S.C. 1581(a) is an Act of Congress, not a rule or regulation promulgated by the Customs Service with respect to the enforcement of the customs laws, and for that reason would have no application under Subsection 89(b) in any event.

Service on the Coast Guard when the latter is acting—as it was here—to enforce laws having nothing directly to do with customs regulations.

The district court found as a fact that the purpose of the boarding in this case was to enforce documentation and safety laws, rather than the customs laws.³ Accordingly, the applicable statute was 14 U.S.C. 89(a), which allows the Coast Guard to "make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas" and for those purposes "at any time [to] go on board of any vessel subject to the jurisdiction or to the operation of any law, of the United States * * *." This was the relevant statute and it fully authorized the Coast Guard's conduct in this case.

2. The Fourth Amendment does not prohibit the Coast Guard from exercising its statutory authority to board United States flag vessels at any time to make documentation and safety inspections. That Amendment bars only "unreasonable searches and seizures," and in regulating vessels flying the United States flag, as in regulating the liquor industry, "Congress has broad authority to fashion standards of reasonableness for searches and seizures." *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 77.

³That finding is amply supported by the evidence (*e.g.*, Tr. 47-48, 53, 125, 132-133, 136, 146, 153, 176). Petitioners base their contrary assertion—that the boarding was actually conducted to enforce the customs laws—largely on the fact that when the name "Royono" was fed into the Customs computer a positive response was received. But the Coast Guard officers knew that the "Royono" identified by the computer was not petitioners' vessel (Tr. 120). Moreover, the Coast Guard frequently encounters different pleasure craft with the same name (Tr. 151-152). Thus the positive response by the computer was not the basis for the decision to inspect the Royono.

In *United States v. Biswell*, 406 U.S. 311, this Court upheld against Fourth Amendment challenge an unannounced, warrantless inspection by federal agents, acting pursuant to the Gun Control Act of 1968, 82 Stat. 1213, 18 U.S.C. 921 *et seq.*, of the premises of a pawn shop operator federally licensed to deal in sporting weapons. The broad principles there deemed controlling also govern here. Federal regulation of United States flag vessels is "deeply rooted in history,"⁴ "[l]arge interests are at stake,⁵ and inspection is a crucial part of the regulatory scheme" (406 U.S. at 315). Indeed, "if inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are necessary" (*id.* at 316). And "inspections for compliance with [the registry and safety laws] pose only limited threats to the [vessel operator's] justifiable expectations of privacy," since when an individual chooses to register his vessel under this country's laws—receiving the benefits and protections to which a United States flag ship is entitled on the high seas—"he does so with the knowledge that his [vessel] will be subject to effective inspection" (*ibid.*). In sum, where, as here, federal agents make a regulatory inspection that is specifically authorized by statute, that furthers urgent federal interests, and that poses only a minimal threat to privacy interests, their action "must be deemed reasonable official conduct under the Fourth Amendment" (*ibid.*).

⁴See, e.g., Rev. Stat. 4131 *et seq.*

⁵Apart from the purely domestic interest that the United States has in the enforcement of its documentation and safety laws, we note that the multi-national Convention on the High Seas, to which the United States is a signatory, fixes responsibility upon each nation for the documentation of ships flying its flag and requires each nation to take measures to ensure the seaworthiness of those vessels. Convention on the High Seas, Articles 5, 6, and 10, 13 U.S. Treaties 2313, 2315-2316.

Almeida-Sanchez v. United States, 413 U.S. 266, and the other border search cases relied on by petitioner, are less apt. Indeed, in *Almeida-Sanchez* the Court distinguished *Colonnade Catering* and *Biswell* according to characteristics that describe the present case. Thus, as in *Colonnade Catering* and *Biswell*, this case involves an inspection of an activity (albeit non-commercial) that is "closely regulated and licensed by the Government" (413 U.S. at 271). There is a "long history of federal regulation" here as there was in *Colonnade* and a "pervasive system of regulation" as in *Biswell* (*ibid.*). Just as "[t]he businessman in a regulated industry in effect consents to the restrictions placed upon him" (*ibid.*), so does the operator of a United States flag vessel. Finally, as in *Colonnade Catering* and in *Biswell*, but in contrast to *Almeida-Sanchez*, there was no doubt in this case "that the individual [vessel] searched was within the proper scope of official scrutiny" (*ibid.*).⁶

⁶CF. *United States v. Brignoni-Ponce*, 422 U.S. 873, 883, n.8: "Border Patrol agents have no part in enforcing laws that regulate highway use, and their activities have nothing to do with an inquiry whether motorists and their vehicles are entitled, by virtue of compliance with laws governing highway usage, to be upon the public highways. Our decision thus does not imply that state and local enforcement agencies are without power to conduct such limited stops as are necessary to enforce laws regarding drivers' licenses, vehicle registration, truck weights, and similar matters."

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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